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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,384	04/01/2004	Eilaz Babaev	103514-0011-103	7585

7590 01/10/2008  
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One International Place  
Boston, MA 02110-2624

EXAMINER
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CHENG, JACQUELINE

ART UNIT	PAPER NUMBER
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3768

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/815,384

Applicant(s)

BABAEV, EILAZ

Examiner

Jacqueline Cheng

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-17, 37-49, and 63-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 8-17, 37-49 and 63-81 is/are allowed.
- 6) ☒ Claim(s) 82-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/4/07 10/29/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent

2. **Claims 82-85, 87, 90, and 92** are rejected under 35 U.S.C. 102(a) as being anticipated by Kost (US 6,041,253). Kost discloses an ultrasonic method wherein application of ultrasound is used to facilitate transport of a compound, through the skin (col. 4 line 42-51). The compound can be a drug (medicament) applied to the skin (tissue) in the forms such as a gel, ointment, lotion, insulin, and antibiotics which are used in order to help to heal the patient, having a therapeutic effect (col. 10 line 41-49). The probe tip of the ultrasonic energy being applied is at a distance from the skin, such as 3 cm, so therefore is delivered through an expanse of substantially purely gaseous medium (col. 13 line 26-27, col. 13 line 32-33).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 86, 89, and 91** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kost in view of Duarte (US 6,273,864 B1). Kost discloses most of what is claimed except for generating the ultrasonic energy at an intensity for stimulating cell growth. Duarte discloses that providing ultrasonic energy at a intensity to stimulate regeneration of cells is well known in the art of ultrasonic therapy (col. 6 line 35-44). Duarte also discloses that ultrasound frequency in the range of 20 kHz and 10MHz should be effective in wound healing (col. 1 line 66- col. 2 line 4) which is within the range of less than 1 MHz that Kost uses (col. 4 line 60-62).

5. **Claim 88** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kost. Kost does not explicitly disclose using any particular amplitude, but it would be a design choice to pick an amplitude of 3 microns.

#### ***Allowable Subject Matter***

6. Claims 1-5, 8-17, 37-49, and 63-81 are allowed.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,315,998 to Tachibana.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline Cheng whose telephone number is 571-272-5596.

The examiner can normally be reached on M-F 10:00-6:30.

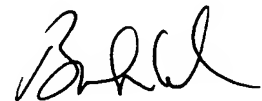
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

A handwritten signature in black ink, appearing to be 'B. Casler', is located in the lower right quadrant of the page.